

# Exhibit 1

Deposition of John T. Viars

Sheet 1 Page 1

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION

JOHN T. VIARS,

Plaintiff,

v.

Civil Action No. 5:15-cv-15410  
Honorable Irene C. Berger

GREENBRIER MINERALS, LLC,  
and NATHAN BRADA

Defendants.

The deposition of JOHN TOTTON VIARS was taken pursuant to the Federal Rules of Civil Procedure in the above-entitled action, on the 25th day of July, 2016, commencing at 1:00 p.m. and concluding at 4:45 p.m., at the law offices of Dinsmore & Shohl, LLP, 707 Virginia Street, 13th Floor, Charleston, Kanawha County, West Virginia, before Nancy McNealy, Certified Verbatim Reporter-Master, duly certified by the West Virginia Supreme Court of Appeals and the National Verbatim Reporters Association and Notary Public of West Virginia, pursuant to notice.

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## I N D E X

Witness:	Examination
John Totten Viars	4 (Robinson) 176 (Walters)

Exhibits:	Marked
No. 1, Application for Employment	52
No. 2, New Employment/Change of Status	58
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Form	

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## APPEARANCES:

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(Witness Sworn.)

1  
2 THEREUPON came,  
3 JOHN T. VIARS  
4 the Plaintiff herein, having been first duly sworn, testified  
5 as follows:  
6 EXAMINATION  
7 BY MR. ROBINSON:  
8 Q Mr. Viars, again my name is Bill Robinson. I  
9 represent Greenbrier Minerals in connection with this lawsuit.  
10 Have you ever given a deposition before?  
11 A Yes.  
12 Q You have. Okay, so you know basically what  
13 we're going to do.  
14 A Yes.  
15 Q You understand you're under oath?  
16 A Yes.  
17 Q I'll be asking question. You'll be answering  
18 them truthfully.  
19 A Yes.  
20 Q You've been taught to say yes or no if that's  
21 the correct answer, right?  
22 A {Witness nods affirmatively.}  
23 Q It's not a marathon. I think we'll be out of  
24 here before 5:00, but if at anytime you want to take a break

1 Q So all you remember at this point is Danny and  
2 T. J.?  
3 A I stand to be corrected, sir. I did work for  
4 Chester for a brief time.  
5 Q So Chester, Danny and T. J. are the three that  
6 you can remember?  
7 A Yes.  
8 Q Did you have a good relationship with all of  
9 them?  
10 A For the most part.  
11 Q Did you feel that all three of those guys  
12 treated you fairly?  
13 A No.  
14 Q Who did you feel didn't treat you fairly?  
15 A T. J.  
16 Q Why did you feel T. J. didn't treat you  
17 fairly?  
18 A It seemed like the harder I worked, the more  
19 he stayed on me.  
20 Q Do you recall approximately what period of  
21 time you worked for T. J.?  
22 A The last part of employment.  
23 Q And when you say the harder you worked, the  
24 harder he stayed on you, can you give me some examples?

1 A I just couldn't do nothing right according to  
2 him. No matter what you did, it was always wrong.  
3 Q You ever have any arguments with him?  
4 A No.  
5 Q You guys didn't raise your voices with each  
6 other, that kind of thing?  
7 A I didn't.  
8 Q Okay. Did he raise his voice with you?  
9 A Yes.  
10 Q That's because he felt you weren't doing a  
11 good job?  
12 A I suppose.  
13 Q Was T. J. your section foreman at the time of  
14 your discharge?  
15 A Yes.  
16 Q And as of that time in June 2014,  
17 approximately how long had you been working with him?  
18 A Not very long at all.  
19 Q A matter of weeks?  
20 A Maybe a month or so.  
21 Q All right. Now Danny and Chester, did you  
22 have good relationships with them?  
23 A No problem.  
24 Q You felt they treated you fairly?

1 A Yes.  
2 Q You allege in this case that by terminating  
3 your employment in June of 2015, Greenbrier Minerals  
4 interfered with your rights under the Family and Medical Leave  
5 Act. Are you familiar with that allegation?  
6 A Yes.  
7 Q And are you also familiar with the allegation  
8 that by terminating your employment in June 2015, Greenbrier  
9 Minerals retaliated against you for exercising your rights  
10 under the FMLA? Do you understand that allegation has been  
11 made as well?  
12 A Ask the question again, please.  
13 Q Do you understand that you assert in this case  
14 that by discharging you in June 2015, Greenbrier Minerals  
15 retaliated against you for exercising your rights under the  
16 FMLA?  
17 A I was never offered FMLA.  
18 Q Do you understand you're alleging retaliation  
19 for using FMLA?  
20 A I never used FMLA.  
21 Q You're not aware of a retaliation allegation  
22 in this case; is that fair?  
23 A Yes.  
24

(WHEREUPON, the Complaint was marked

1 as Deposition Exhibit No. 4 for  
2 identification and a copy attached  
3 hereto and made a part hereof.)  
4 BY MR. ROBINSON:  
5 Q Let me ask you, Mr. Viars, to please turn to  
6 page 2 of what we've marked as Deposition Exhibit 5, but  
7 before we go there.  
8 MR. WALTERS: It's 4.  
9 BY MR. ROBINSON:  
10 Q Thanks. I correct that to Exhibit 4. Do you  
11 recognize the document we've marked as Exhibit 4?  
12 A Yes.  
13 Q It's a copy of the complaint that you filed in  
14 this lawsuit; is that right?  
15 A Yes.  
16 Q Did you read this before it was filed?  
17 A Yes.  
18 Q Let me ask you to turn please to paragraph 8  
19 on page 2 of this exhibit?  
20 A (Witness complies.)  
21 Q Paragraph 8 rather alleges, "On or about April  
22 27, 2015, plaintiff's mother underwent open-heart surgery.  
23 Following her surgery, plaintiff took a one week's vacation to  
24 provide support and care for his mother." You're familiar

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1 with that allegation?  
2 A Yes.  
3 Q Do you believe that to be correct?  
4 A Yes.  
5 Q All right. Then paragraph 9 reads, "On or  
6 about June 1, 2015, plaintiff's mother's condition worsened  
7 and she was moved from a nursing home to the hospital.  
8 Plaintiff Viars is the medical power of attorney for his  
9 mother and as such took the day off to care for his mother."  
10 Are you familiar with that allegation?  
11 A Yes.  
12 Q And do you believe that to be accurate?  
13 A Yes.  
14 Q Am I correct that the only FMLA leave time at  
15 issue in this case took place in April 2015 when you took five  
16 days of vacation time for your mother's surgery and a single  
17 day in June 2015 when your mother was moved to the hospital?  
18 A Yes.  
19 Q You did not take off any other FMLA covered  
20 time before your discharge in June 2015?  
21 A No.  
22 Q Do you recall that right within a month or so  
23 after you transferred to Lower War Eagle you were written up  
24 for causing equipment damage?

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1 A Excuse me.  
2 Q Do you remember that shortly after being  
3 transferred to the Lower War Eagle Mine you were written up  
4 for causing equipment damage.  
5 A Shortly after?  
6 Q Yes, sir.  
7 A No, sir. I don't know what time frame we're  
8 talking here.  
9 Q We talked about a moment ago about you were  
10 transferred to Lower War Eagle Mine effective August 5, 2012,  
11 correct?  
12 A Yes.  
13 (WHEREUPON, the Disciplinary Form  
14 was marked as Deposition Exhibit No.  
15 5 for identification and a copy of  
16 which is attached hereto and made a  
17 part hereof.)  
18 BY MR. ROBINSON:  
19 Q All right. Then let me ask you to look at  
20 what we've marked as Deposition Exhibit No. 5, which is dated  
21 August 31, 2012. Have you seen this document before?  
22 A No, sir.  
23 Q This is a document that appears to have been  
24 prepared by Danny Osborne, and I apologize for the quality of

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1 the copy but the first language at the top says, "What was the  
2 cause of the failure," and he circles item C, "Equipment  
3 damage." Do you recall an incident on or about August 31,  
4 2012, relating to an instance of equipment damage?  
5 A I don't remember.  
6 Q If you look down at item number 6, it asks the  
7 question, "What can be done to prevent this from happening  
8 again," and Mr. Osborne answers "That the shuttle car operator  
9 needs to pay more attention to and where the tight spots are  
10 and to take more time to properly put cable out of his  
11 roadway." Do you recall if Mr. Osborne talked to you about  
12 that in August 2012?  
13 A I don't remember it.  
14 Q Do you remember this incident at all?  
15 A Not when my canopy caught a cable, no.  
16 Q And it says in item 7, "Give a description of  
17 what happened to cause cable damage," and Mr. Osborne wrote,  
18 "Shuttle car was coming back to the dump when his canopy  
19 caught cable against rib." Does that help you remember at  
20 all?  
21 A I can't recall this.  
22 Q Okay. Mr. Osborne then writes, "I talked to  
23 the shuttle car operator, told him to be more aware of where  
24 and how the miner cable is running and hanging, take more time

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1 to ensure it's out of his roadway." Do you recall him talking  
2 to you about that?  
3 A Now that it mentions the miner cable, I recall  
4 the incident.  
5 Q Okay. And do you recall that in this incident  
6 on or about August 31, 2012, the cable was damaged when you  
7 ran over it?  
8 A Didn't run over it, sir. It was on the rib  
9 when my canopy caught it. I do remember what he's talking  
10 about. I thought he was referring to the shuttle car cable  
11 itself.  
12 Q What is your understanding or memory of what  
13 occurred that day?  
14 A My understanding is you could only get it up  
15 so high, and it was a real tight place. The canopy stuck out  
16 and when I turned the corner, I had been turning it all day  
17 and staying off of it, but the one time got in there and got a  
18 little close to the rib and my canopy cut it and cut the miner  
19 cable.  
20 Q Okay. So this incident was written up on  
21 August 31, 2012, did in fact occur?  
22 A Yes, it did, but I've never seen this paper  
23 before in my life.  
24 Q Do you recall Mr. Osborne talking to you about

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1 call back and ask for an additional day; does that sound  
 2 familiar?  
 3 A Yes, and that also sounds terribly wrong.  
 4 Q It sounds correct but wrong?  
 5 A It's wrong.  
 6 Q Is that correct?  
 7 A No.  
 8 Q Okay, all right. What do you recall  
 9 happening?  
 10 A Exactly what I just told you. My very words  
 11 to Nathan was I said I had 40 hours, right? He said yes, 40  
 12 hours. I said okay. I said, hopefully, I don't need all of  
 13 them, but I'll be back as quick as she's taken care of.  
 14 Q Do you remember calling Earl Crone at home and  
 15 asking for an additional day of vacation?  
 16 A No, I do not. I remember possibly trying but  
 17 it wasn't to ask for an additional day. I may have tried to  
 18 call Harold to let him know what was going on because I felt  
 19 that they should be informed.  
 20 Q Do you remember actually talking to Mr. Crone  
 21 about being off on Monday, April 27, the day of your mom's  
 22 surgery?  
 23 A No, I do not.  
 24 Q And as you can see from the attendance chart,

1 vacation days?  
 2 A I did.  
 3 Q At what hospital was your mom's surgery  
 4 performed?  
 5 A CAMC.  
 6 Q Memorial Division up in Kanawha City?  
 7 A Yes.  
 8 Q Your interrogatory answers list Dr. Kenneth  
 9 Sales as among your mom's treating physicians. Did she him  
 10 for her heart condition?  
 11 A I'm thinking she didn't see Dr. Sales until  
 12 after she had the surgery.  
 13 Q Dr. Sales is a family physician?  
 14 A Yeah, I'm pretty sure.  
 15 Q Was she your mom's treating family doctor?  
 16 A Yes.  
 17 Q And I assume at some point Dr. Sales or  
 18 someone else referred your mom then to a cardiologist?  
 19 A Well, she didn't have Dr. Sales until after  
 20 she'd had the open heart surgery. She was at Logan. Now I  
 21 think this is the physician's name, Dr. Malik from Logan, done  
 22 a cath on her and found the blockages and he sent her directly  
 23 to CAMC.  
 24 Q And for the court reporter can you spell Dr.

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1 sir, Exhibit No. 10, the vacation days you took in April were,  
 2 in fact, counted by Greenbrier Minerals as vacation days, were  
 3 they not?  
 4 A Yes, they are.  
 5 Q They were not counted as unexcused absences?  
 6 A That's correct.  
 7 Q You were paid for those days?  
 8 A I was.  
 9 Q And, in fact, according to this chart, you had  
 10 no unexcused absences at all in 2015; is that correct?  
 11 A That's correct.  
 12 Q And because they were counted as vacation  
 13 days, as you had requested, they were not counted as  
 14 chargeable absences or occurrences under the attendance  
 15 policy; is that right?  
 16 A Say that one more time.  
 17 Q Did you understand that under the company's  
 18 attendance policy, unexcused absences, for example, were  
 19 counted as chargeable absences or occurrences --  
 20 A Yes.  
 21 Q -- that would count against you?  
 22 A Yes.  
 23 Q And did you understand that these five days in  
 24 April were not counted as chargeable days because they were

1 Malik's name?  
 2 A It probably wouldn't be right.  
 3 Q Close approximation.  
 4 A M-a-u-i.  
 5 Q Okay, well, like the island?  
 6 A Right.  
 7 Q All right. Once your mom was referred to  
 8 CAMC, did she get a cardiologist here in Charleston?  
 9 A She did.  
 10 Q Who was her cardiologist here in Charleston?  
 11 A I can't remember his name.  
 12 Q And is it that cardiologists who also  
 13 performed her surgery at CAMC?  
 14 A Yes.  
 15 Q And then following her surgery she began  
 16 seeing Dr. Sales?  
 17 A Yes.  
 18 Q Do you recall what time of day your mother's  
 19 surgery occurred?  
 20 A It started early in the morning.  
 21 Q And, unfortunately, I know from personal  
 22 experience with these bypasses, it's safe to assume your mom  
 23 was unconscious most or all of the day?  
 24 A Yes.

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1 the third shift dispatcher. I can't remember which one of  
 2 them boys I talked to.  
 3 Q Do you recall the name of the third shift  
 4 dispatcher?  
 5 A Face right in my head, but I can't remember  
 6 his name.  
 7 Q Approximately what time did you call in?  
 8 A It was way in the morning hours. I can't  
 9 remember exact time.  
 10 Q Okay. And I think in a question a minute ago  
 11 I said 3 or 4 p.m. You arrived there 3 or 4 a.m. on June 10?  
 12 A It was a.m. hours.  
 13 Q And you reported to Mr. Grimmett or the other  
 14 dispatcher what information?  
 15 A Told her what had happened, that they had to  
 16 take my mother to the hospital from the nursing home and was  
 17 told to me that she was in pretty bad shape and I was needed  
 18 to go and to go be with her so I went.  
 19 Q And what response did you receive to that?  
 20 A He said I'll tell him when they come. He was  
 21 talking about management.  
 22 Q Okay. Anything else you recall?  
 23 A No.  
 24 Q That was the full extent of the conversation?

1 Q What were the hours of your shift normally as  
 2 of June 10, 2015, June 11?  
 3 A 7:00 to 4:00.  
 4 Q 7 a.m. or p.m.?  
 5 A 7 a.m.  
 6 Q And so when you came to work on June 11 with  
 7 the work release form in hand, did you see Mr. Brad at about 7  
 8 a.m. or shortly before 7 a.m.?  
 9 A Before 7 a.m.  
 10 Q And Mr. Brada was where when you saw him?  
 11 A He was getting on a ride outside of the mine  
 12 office where they keep the rides to charging and he was  
 13 heading into the mines.  
 14 Q And was Mr. New with him?  
 15 A He was.  
 16 Q And Mr. New's position was what at the time?  
 17 A Mine foreman.  
 18 Q Were there others present as well?  
 19 A Not that I remember.  
 20 Q So did you stop them when you saw them as they  
 21 were getting ready to enter the mine?  
 22 A I did. I approached Nathan.  
 23 Q All right. And tell me -- take it from there.  
 24 Tell me what you said and what he said in response?

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1 A That was the full extent.  
 2 Q Did you talk to anyone else from work on June  
 3 10?  
 4 A Not that I recall.  
 5 Q Did you return to work on June 11?  
 6 A I did.  
 7 Q You were not required to miss work to provide  
 8 care to your mother on that day?  
 9 A I probably could've been there but I had to  
 10 make a living.  
 11 Q And you came to work on June 12?  
 12 A I did.  
 13 Q June 12 was the day you were suspended.  
 14 A Yes.  
 15 Q Now when you returned to work on June 11, did  
 16 you give the work release form, Exhibit 11, to anyone?  
 17 A I did.  
 18 Q Who did you give it to?  
 19 A Nathan Brada.  
 20 Q And do you recall where that discussion took  
 21 place?  
 22 A Outside of the mine office and actually I  
 23 ended up having to give it to Jamie New because Nathan  
 24 wouldn't take it.

1 A I come to Nathan and I said, "Nathan, here's  
 2 the excuse to where was at tomorrow with my mom," and he said,  
 3 "I ain't got time for all your blanking lies. Give that S'  
 4 to Jamie." That's exactly what he said.  
 5 Q And you responded how?  
 6 A I handed it to Jamie. I said nothing.  
 7 Q And did he elaborate on what he meant by your  
 8 lies?  
 9 A He did not.  
 10 Q Anything else you recall Mr. Brada saying  
 11 during that conversation?  
 12 A No.  
 13 Q That was it?  
 14 A That was it.  
 15 Q That one statement?  
 16 A That one statement.  
 17 Q How about Mr. New, did he say anything during  
 18 the conversation?  
 19 A I handed him the excuse. He said okay, best  
 20 to what I can remember.  
 21 Q Was that the extent of that entire interaction  
 22 between you, Mr. New and Mr. Brada prior to 7 a.m. on June 11?  
 23 A You're saying prior to 7 a.m., well, when I  
 24 come back from my vacation, Nathan cussed me as well.

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1 Q Okay, we'll get into that in a minute. Let's  
2 stick with June 11 for a minute.  
3 A You said prior to 7 a.m., that would be very  
4 much prior.  
5 Q It would be very much prior. We'll go back.  
6 A Okay.  
7 Q On June 11 was that the extent of any  
8 interaction you had with Mr. Brada and Mr. New with regard to  
9 your work release form?  
10 A Yes.  
11 Q Okay. Did you talk to Mr. Brada or Mr. New at  
12 any other time that day, June 11?  
13 A I don't recall talking to them, no. I may  
14 have, maybe just something about work or maybe said something  
15 to him, but as far as about that matter, no.  
16 Q Nothing with regard to either the form or you  
17 being absent from work on June 10?  
18 A No.  
19 Q All right. Let's go back and fill in the gap.  
20 When you returned from vacation, you're referring to vacation  
21 in April of 2015?  
22 A Yes.  
23 Q And you said Mr. Brada made a comment to you  
24 when you returned from vacation.

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1 A Yes. I didn't see Mr. Brada until the end of  
2 the shift. I was -- that's on my way home, and I went in  
3 after I came outside to fill out my fire boss book or no, no,  
4 I'm wrong. I was on the section by then, or no, I stand to be  
5 corrected again. They had somebody -  
6 Q Go ahead and think it out. We're not in a  
7 race here.  
8 A They pulled me off that day to work belts  
9 cause somebody was absent, okay, and I remember clearly now,  
10 and I was going in to fill out the fire boss book, and Nathan  
11 was on his way out of that office and he looked and saw me,  
12 and he said, "Well, John T., we're glad you can f'ing' join  
13 us finally," and I just let that go.  
14 Q Do you recall what date that comment might  
15 have been made on?  
16 A It was the day I came back from vacation.  
17 Q April 28th?  
18 A Whatever the day I come back was. I believe  
19 that was the day.  
20 Q I'm glad you can "f'ing" join us?  
21 A Yes.  
22 Q Who else was present when that comment was  
23 made?  
24 A There were people in the office. I do

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1 remember that T. J. Warden was one of them, and there were  
2 other folks, but I can't exactly remember who all was in  
3 there. I'd be afraid to make an assumption on that.  
4 Q Okay. How did you respond to Mr. Brada's  
5 comment?  
6 A And I said -- I didn't say a word.  
7 Q All right. From the time you first requested  
8 vacation in April 2015 until you were suspended on June 12,  
9 did Mr. Brada make any comments to you other than the two  
10 you've told us about already?  
11 A No.  
12 Q When Mr. Brada made the comment after you  
13 returned from vacation in April, did Mr. Warden say anything?  
14 A No.  
15 Q Did anyone else say anything?  
16 A No.  
17 Q So it was, essentially, Mr. Brada making his  
18 comment and you walking away?  
19 A Yes.  
20 Q In any event you were given the day off as you  
21 requested on June 10 to be with your mother at the hospital?  
22 A I didn't know at the time that it was excused,  
23 no. He didn't say anything to me.  
24 Q Well, when you came back to work and gave them

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1 the work release form on June 11, how did you think the  
2 absence would be treated?  
3 A I believed it would be unexcused.  
4 Q You thought it would be unexcused?  
5 A Yes.  
6 Q Why did you think it would be unexcused?  
7 A Because I've seen them on many, many  
8 occasions, didn't matter if you had an excuse or not. If you  
9 didn't have a date to back the absence up, it was unexcused  
10 and you received an occurrence for it.  
11 Q Let me ask you look please back to Exhibit 10,  
12 the attendance chart.  
13 A (Witness complies.)  
14 Q You'll see that for both 2013 and 2015, there  
15 are no unexcused days counted against you those years. Do you  
16 see that?  
17 A 20 what now?  
18 Q 2013 and 2015 you had no unexcused days  
19 according to this chart, right?  
20 A No.  
21 Q There are three unexcused absences listed in  
22 2012. To your knowledge, were any of those unexcused absences  
23 situations such that you just described where you provided  
24 work release forms or medical excuses, and they still counted

Sheet 34 Page 133

1 A Solid block.  
2 Q And he came to you and made the request to  
3 you, as I understand it, sometime that morning; is that fair?  
4 A No.  
5 Q What do you recall about when the request was  
6 made that you construct this brattice?  
7 A Well, I knew that the supplies were over there  
8 around noonish, but he had me doing other things, and then he  
9 said, hey, you got to go build that brattice and by the time I  
10 got over there to build it, it was probably between, just a  
11 rough estimate, one, two o'clock in the day.  
12 Q All right. So the supplies to build the  
13 brattice on June 11 were delivered to your area around noon  
14 that day?  
15 A That's correct.  
16 Q But as I understand what you're saying,  
17 because you were doing other things, you didn't actually start  
18 building it until sometime between 1:00 and 2:00?  
19 A That's right.  
20 Q And around three o'clock that afternoon, did  
21 Mr. Warden return to the area to check on your progress in  
22 building the brattice?  
23 A He did.  
24 Q And the brattice was not complete?

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1 A That's correct.  
2 Q Fair to say that Mr. Warden was displeased  
3 that the brattice hadn't been completed?  
4 A He didn't tell me he was.  
5 Q Did he tell you that three hours from the time  
6 those materials were delivered should have been plenty of time  
7 for you to build it?  
8 A He did not.  
9 Q Did he direct you to remain in the area and  
10 continue into the next shift until you completed the brattice?  
11 A He did.  
12 Q And did you, in fact, complete it?  
13 A I did.  
14 Q Do you recall approximately what time?  
15 A Approximately, the time that the brattice was  
16 finished was probably about four o'clock, between four and  
17 five, I'll say that.  
18 Q I guess we're talking about the end of your  
19 shift. We should be more specific. Your shift was scheduled  
20 to end at 3:00?  
21 A No, sir, 4:00. We left the section probably  
22 between 3:15 and 3:30 every day.  
23 Q All right. So how long - in your view how  
24 long did you have to stay over into the next shift to complete

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1 the brattice?  
2 A Well, I completed it, like I said, between  
3 4:00 and 5:00, but I didn't get outside till nine o'clock.  
4 Q You didn't have a ride?  
5 A That's right.  
6 Q When you completed the brattice between four  
7 and five o'clock, was Mr. Warden still at the mine?  
8 A I wouldn't know. I was inside and he was  
9 outside.  
10 Q Did you know that Mr. Warden was unhappy with  
11 the situation?  
12 A He didn't say he was.  
13 Q Did you detect that he was?  
14 A I be guessing again, wouldn't I?  
15 Q Well, I'm not asking you to guess. Based on  
16 your observations, did you observe that he was upset or you  
17 didn't know?  
18 A He didn't appear to be.  
19 Q All right. But you're catching on. Good  
20 catch. Do you remember if there had been another incident  
21 earlier that week with your construction of another brattice?  
22 A Yes.  
23 Q Tell me about that.  
24 A Okay, I know the one you're talking about. I

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1 built a stopping and the bottom was busted up real bad, and it  
2 was very difficult to get the block to set in there straight  
3 and to be level, and I done the best that I could with it. He  
4 come over there and he starts cussing about it. The cuss  
5 words he said, Lord, he said so many, I couldn't tell you what  
6 he said.  
7 Q He being Mr. Warden?  
8 A Yes. Anyway I told him, I said, "Yeah, it's  
9 leaning. I know it's leaning, T. J." I said, "I'm starting  
10 from one end and taking it to the top all the way across so it  
11 don't fall," and I said, "I believe it will be okay," and he  
12 said, "Man, that would hurt somebody," and I said, "Well, if I  
13 get through the top and get it plastered, I think it will be  
14 okay," and at that point he went away. Nothing else was ever  
15 said.  
16 Q Did he tell you he felt during this discussion  
17 where he said he was afraid it would tip, was it clear that he  
18 thought there was a safety issue, this might fall on somebody?  
19 A Yes.  
20 Q Did you rebuild that brattice or did you  
21 continue to construct it?  
22 A Continued to construct it.  
23 Q And was it completed?  
24 A It was.